

**WATER RIGHT, ENTITLEMENT AND PERPETUAL DELIVERY  
AGREEMENT  
BY AND AMONG  
THE ZUNI INDIAN TRIBE,  
THE UNITED STATES FOR THE BENEFIT OF THE ZUNI INDIAN TRIBE,  
AND THE LYMAN WATER COMPANY  
FOR THE IMPLEMENTATION OF THE ZUNI INDIAN TRIBE WATER  
RIGHTS SETTLEMENT AGREEMENT  
IN THE LITTLE COLORADO RIVER BASIN**

THIS AGREEMENT, entered into this 27<sup>th</sup> day of February, 2006, is by and among the ZUNI INDIAN TRIBE, a federally recognized Indian Tribe (the "Tribe"), the UNITED STATES for the benefit of the Tribe (the "United States") and THE LYMAN WATER COMPANY, an Arizona non-profit corporation ("LWC").

**WITNESSETH:**

WHEREAS, on June 7, 2002, the Tribe entered into a negotiated settlement of its water rights claims in the Little Colorado River General Stream Adjudication (the "Settlement Agreement") with the United States; the State of Arizona, including its Game and Fish, Land and State Parks agencies; St. Johns Irrigation and Ditch Co. ("SJIC"); LWC; Round Valley Water Users' Association; Salt River Project Agricultural Improvement and Power District; Tucson Electric Power Company; the City of St. Johns; the Town of Eagar; and the Town of Springerville (hereinafter jointly the "Parties"), in order to reestablish and maintain the wetland environment that previously existed within the Tribe's Zuni Heaven Reservation, including restoration of water to its Sacred Lake, by acquiring surface water rights ("SWRs") on a voluntary basis while maintaining, to the greatest extent possible, the status quo for existing surface and ground water users in the area.

WHEREAS, on June 23, 2003, the Zuni Indian Tribe Water Rights Settlement Act of 2003 (Pub. L. No. 108-34, 117 Stat. 782) was signed into law, which authorized the federal action required to fund and carry out the Settlement Agreement.

WHEREAS, pursuant to the Settlement Agreement, the Tribe will acquire, with the cooperation of the Parties, the rights to 3,600 acre-feet per annum ("AFA") of surface water and will waive its water rights claims in the Little Colorado River General Stream Adjudication, provided that the Tribe has acquired or waived its right to acquire rights to at least 2,350 AFA of surface water measured at Lyman Reservoir prior to December 31, 2006 (the "Enforcement Date").

WHEREAS, LWC, as a Party to the Settlement Agreement, has agreed to cooperate in good faith at all times from and after the day the Settlement Agreement was executed to facilitate the successful completion of all conditions precedent to making the Settlement Agreement enforceable.

WHEREAS, LWC is the owner of the Lyman Reservoir and irrigation system and the appropriation of water by LWC is for the use and benefit of its stockholders owning land in the area from Zion Reservoir to Lyman Reservoir as provided in the Supplemental Decree on Behalf of the Lyman Water Company, entered on March 17, 1921 by the Superior Court of the State of Arizona, in and for the County of Apache.

WHEREAS, in satisfaction of conditions precedent to the enforceability of the Settlement Agreement, the Tribe desires to acquire water rights from LWC prior to the Enforcement Date in the most expeditious manner that is legally consistent with the articles of incorporation, bylaws and operating procedures of LWC and that can be approved by the Norviel Decree Court and the Little Colorado River General Stream Adjudication Court ("Adjudication Court").

WHEREAS, under Arizona law, water rights that are used for irrigation purposes, that were initiated before March 26, 1919, the date the first comprehensive State Water Code was filed with the Secretary of State, and that are contained in a decree over which a court of competent jurisdiction maintains continuing jurisdiction, may be severed from the land to which they are appurtenant and transferred to other land upon approval of the court. The Norviel Decree Court retains jurisdiction under Arizona law over the water rights that are the subject of this Agreement and has the authority to approve this Water Right, Entitlement and Perpetual Delivery Agreement and to deem it a severance and transfer of the water rights that are the subject of this Agreement.

WHEREAS, in satisfaction of other conditions precedent to the enforceability of the Settlement Agreement, the Tribe and LWC have entered into a Lyman Dam Operation and Storage Agreement ("Operating Agreement") governing the storage, delivery and pass-through of Tribal water acquired pursuant to the Settlement Agreement from entities other than LWC and, in conjunction with the Arizona Game and Fish Commission, will enter into a Water Right Severance and Transfer Agreement governing the process of severance and transfer of certain other water rights to be acquired.

WHEREAS, the Parties are willing to enter into this Agreement that sets forth the terms upon which the Tribe and the United States may acquire from LWC a permanent right and entitlement to water as described herein.

NOW, THEREFORE, based upon the foregoing, and in consideration of the mutual promises and covenants herein contained, the Parties agree as follows:

**1. Tribe's Annual Entitlement to LWC Delivered Water.**

LWC hereby grants to the Tribe and the United States in trust for the Zuni Indian Tribe all right, title and interest to a perpetual water right and entitlement to receive, on an annual basis, twelve percent (12%) of LWC Delivered Water as defined in Paragraph 5 at the priority date of Lyman Reservoir under the Norviel Decree. The parties agree that twelve percent (12%) of LWC Delivered Water has historically provided 972 AFA.

The Tribe's water right and annual entitlement to twelve percent (12%) of LWC Delivered Water as described in this paragraph and in Paragraph 5 hereof shall hereinafter be referred to as the "Tribe's Water Right and Annual Entitlement." Norviel Decree Court approval of this Agreement shall be deemed to be a severance and transfer of water rights from LWC's service area to the Zuni Heaven Reservation in the Little Colorado River Basin in Arizona pursuant to Paragraph 4.6.D of the Settlement Agreement. The Parties agree that upon approval of this Agreement by the Norviel Decree Court, the Tribe and the United States for the benefit of the Tribe shall hold all right, title and interest to the Tribe's Water Right and Annual Entitlement to twelve percent of LWC Delivered Water as described in this paragraph and Paragraph 5 hereof, and LWC shall perpetually deliver such water right and annual entitlement to the Tribe.

## **2. Tribe's Payment.**

As full compensation and consideration for the Tribe's Water Right and Annual Entitlement pursuant to this Agreement, the Parties agree that the Tribe shall pay LWC One Million Four Hundred Sixty-One Thousand One Hundred Seventy-Six Dollars (\$1,461,176.00) along with a one time operation and maintenance payment of Eighty Eight Thousand Five Hundred Dollars (\$88,500.00), the sum of which equals One Million Five Hundred Forty-Nine Thousand Six Hundred Seventy-Six Dollars (\$1,549,676.00) (the "Water Right and Entitlement Price"). As full compensation and consideration for the Tribe's storage and delivery rights under the Operating Agreement and the Water Rights Severance and Transfer Agreement, the Parties agree that the Tribe shall pay LWC Five Hundred Ten Thousand Three Hundred Twenty-Four Dollars (\$510,324.00) along with a one time operation and maintenance payment of Two Hundred Forty Thousand Dollars (\$240,000.00), the sum of which equals Seven Hundred and Fifty Thousand Three Hundred Twenty-Four Dollars (\$750,324.00) (the "Operating Agreement Price").

## **3. Escrow Holder.**

3.A. Within ten (10) business days of the mutual execution of this Agreement, the Tribe shall deposit into escrow with LandAmerica Transnation, located at 1500 South White Mountain Road, Show Low, Arizona 85901 (the "Escrow Holder") the sum of Five Hundred Thousand Dollars (\$500,000.00) of the Operating Agreement Price (the "Down Payment"), to be held in an interest-bearing account, to be released to LWC only upon full satisfaction of the conditions precedent set forth in Paragraph 4 below (the "Conditions Precedent to Water Right, Entitlement and Perpetual Delivery Agreement") or as otherwise provided in this Agreement. The provisions of this Agreement shall constitute joint instructions to the Escrow Holder; provided, however, that LWC and the Tribe may mutually execute such additional instructions as may be reasonable and necessary to carry out the provisions of this Agreement. The Tribe and LWC shall jointly be responsible for the payment of all costs and fees associated with the escrow. Of the Down Payment, Fifty-Five Thousand Dollars (\$55,000.00) shall be nonrefundable (the "Nonrefundable Amount"). In the event that the

Conditions Precedent to the Water Right, Entitlement and Perpetual Delivery Agreement are not met by December 31, 2006, then, within ten (10) business days after December 31, 2006, the Escrow Officer shall refund Four Hundred Forty-Five Thousand Dollars (\$445,000.00), and all proportionate interest accrued thereon, to the Tribe and shall pay LWC the Nonrefundable Amount and all proportionate interest accrued thereon.

3.B. If Conditions 4.B and 4.E of the Conditions Precedent to the Water Right, Entitlement and Perpetual Delivery Agreement are satisfied by December 31, 2006, then the Escrow Officer shall pay LWC on January 2, 2007 the Down Payment and all interest accrued thereon, but only the Down Payment shall be credited against the Operating Agreement Price. The balance of the Operating Agreement Price, together with interest accruing on said balance at the rate of five percent (5%) per annum beginning on January 1, 2007, shall be paid in full by December 31, 2008. If the balance of the Operating Agreement Price is not paid in full by December 31, 2008, LWC shall be entitled to retain the Down Payment together with all interest accrued thereon, and the Operating Agreement and the Water Rights Severance and Transfer Agreement shall be null and void.

3.C. If the Conditions Precedent to the Water Right, Entitlement and Perpetual Delivery Agreement are satisfied by December 31, 2006, then the Water Right and Entitlement Price, together with interest accruing at the rate of five percent (5%) per annum beginning on January 1, 2007, shall be paid in full by December 31, 2008. If the Water Right and Entitlement Price is not paid in full by December 31, 2008, the Water Right Entitlement and Perpetual Delivery Agreement shall be null and void.

**4. Conditions Precedent to Water Right, Entitlement and Perpetual Delivery Agreement.**

The Parties shall promptly initiate and pursue to completion, prior to December 31, 2006, each of the following Conditions Precedent to the Water Right, Entitlement and Perpetual Delivery Agreement:

4.A. LWC shall amend its articles of incorporation, bylaws and operating procedures as necessary in the opinion of LWC to provide for the approval of this Agreement and to allow for the water right, entitlement and perpetual delivery of twelve percent (12%) of LWC Delivered Water to the Tribe and the United States for use on the Zuni Heaven Reservation in accordance with the requirements of this Agreement and the Settlement Agreement;

4.B. LWC shall amend its articles of incorporation, bylaws and operating procedures as necessary in the opinion of LWC to provide for the storage, release, and delivery of Tribal water acquired from sources other than LWC Delivered Water to the Tribe and the United States for use on the Zuni

Heaven Reservation in accordance with the requirements of the Operating Agreement and the Settlement Agreement;

4.C. The Parties hereto shall jointly file with the Norviel Decree Court a Motion to Approve a Water Right, Entitlement, and Perpetual Delivery Agreement in Furtherance of Indian Water Rights Settlement and shall obtain the approval of the Norviel Decree Court of said motion. The motion shall petition the Norviel Decree Court to sever twelve percent (12%) of the right, title and interest of water decreed to LWC for the use and benefit of its stockholders from the acres of land as described in the Norviel Decree and transfer said twelve percent (12%) of the water right to the United States in trust for the Zuni Indian Tribe for use on the Zuni Heaven Reservation pursuant to the Settlement Agreement;

4.D. The Parties hereto shall jointly file with the Adjudication Court an Application for an Order for Special Proceedings to Approve an Indian Water Rights Settlement and Stipulation and shall obtain the approval of the Adjudication Court of said motion; and

4.E. The Secretary of the United States Department of the Interior shall have published in the Federal Register a statement of its findings that the conditions precedent to the enforceability of the Settlement Agreement have been satisfied as set forth in the Settlement Act.

**5. Tribe's Annual Entitlement to LWC Delivered Water.**

Beginning in the year following payment in full of the Water Right and Entitlement Price and the Operating Agreement Price, LWC shall credit the Tribe in perpetuity on or before May 1 of each year with an annual entitlement to twelve percent (12%) of LWC Delivered Water. "LWC Delivered Water" shall be that quantity of water determined from LWC's storage rights in Lyman Reservoir, regardless of the means by which LWC diverts that water from Lyman Reservoir, and including any water left in storage by LWC. LWC Delivered Water shall be determined each year as shown on Exhibit A to this Agreement by an equation based upon the sum of the measured Net Storage in Lyman Reservoir at 12:01 a.m. on May 1, plus diversions by LWC through the Lyman Canal during the period from the preceding October 1 through April 30, minus diversions of up to 200 AF by LWC to the St. John's Irrigation Company through the Lyman Canal pursuant to the Norviel Decree during the preceding October 1 through April 30 period. For purposes of this Agreement, "Net Storage" shall be the total amount of water in storage at Lyman Reservoir heretofore available to LWC stockholders for irrigation and other purposes. Net Storage shall not include water in the Dead Capacity, the existing Minimum Pool, and the storage capacity that is not available due to the deposition of sediment above the Minimum Pool, as the capitalized terms are defined in the Operating Agreement. Net Storage shall not include any water owned or stored by the Tribe in Lyman Reservoir from sources other than LWC Delivered Water. The Tribe's Water Right and Annual Entitlement to LWC Delivered Water shall be

determined by multiplying the quantity of LWC Delivered Water on May 1 of each year as shown on Exhibit A to this Agreement by twelve percent (12%).

The Parties agree that twelve percent (12%) of LWC Delivered Water has historically provided 972 AFA of water measured at Lyman Reservoir based on the median release of 8,100 AFA from Lyman Reservoir to Lyman Canal (excluding any water delivered to SJIC) between 1951 and 2004. The historical releases of water to the Lyman Canal are shown on Exhibit B to this Agreement. The annual period under this Agreement shall be from January 1 through the following December 31.

**6. Accounting.**

6.A. LWC shall establish and maintain a water account for the Tribe's Water Right and Annual Entitlement to LWC Delivered Water under Paragraph 5 (the "Entitlement Account"). The Entitlement Account shall be credited on or before May 1 of each year with the amount of the Tribe's Annual Entitlement to LWC Delivered Water.

6.B. The Entitlement Account shall be debited on an acre-foot by acre-foot basis for all LWC Delivered Water released at the Delivery Point to the Tribe as described in Paragraph 7.

6.C. The Tribe's credits in the Entitlement Account shall not be subject to evaporation, seepage losses or spills.

6.D. LWC shall provide to the Tribe and the United States monthly written reports showing Entitlement Account credits and debits. LWC shall provide this report to the Tribe and the United States no later than the fifteenth (15<sup>th</sup>) day of the month following the month for which the report is compiled.

6.E. Except as provided herein, all remaining credits shall be deducted from the Entitlement Account at 11:59 p.m. on November 15.

**7. LWC Delivered Water Orders.**

7.A. The Tribe shall order delivery of the Tribe's Water Right and Annual Entitlement credits as provided in the Operating Agreement.

Unless otherwise agreed to in writing by LWC, water shall be released to the Tribe at the outlet works of Lyman Reservoir into the Little Colorado River natural channel (the "Delivery Point"). The Tribe's orders of the Tribe's Water Right and Annual Entitlement shall be satisfied when the quantity of water ordered is released to the Tribe at the Delivery Point. Subject to Paragraph 7.C. below, the Tribe shall accept delivery of its orders of the Tribe's Water Right and Annual Entitlement stored in Lyman Reservoir at the Delivery Point.

If not maintained by another entity, LWC and the Tribe shall jointly maintain the accuracy of the existing measuring devices at Lyman Dam and the outlet to the Little Colorado River commensurate with the accuracy required for similar purposes.

7.B. At the sole expense of the Tribe, in consultation with LWC, the Tribe shall be entitled to design, construct, install, and maintain measuring devices at the Delivery Point, Lyman Canal intake, and elsewhere at Lyman Reservoir, which are capable of measuring and recording all deliveries of LWC Delivered Water to the Tribe and LWC. In any measuring devices installed pursuant to this paragraph, the Tribe shall have the option to include telemetry equipment that shall have the ability to provide real-time data transmission to LWC, the Tribe, and the United States.

7.C. The Tribe shall have the option to take delivery of the Tribe's Water Right and Annual Entitlement to LWC Delivered Water through the Lyman Canal and all other related conveyance facilities (the "LWC Facilities") in coordination with other LWC delivery and release obligations, subject only to the delivery capacity limitations of the canal and related conveyance facilities. If the Tribe chooses to take delivery through the Lyman canal and delivery conveyance facilities, LWC and the Tribe shall agree to establish that location as the Delivery Point ("new Delivery Point") for purposes of this Agreement. If the new Delivery Point is established, LWC, the Tribe and the United States shall negotiate an agreement covering all aspects of the delivery, including operation and maintenance charges ("O&M") and losses associated with the new Delivery Point in a manner consistent with LWC's treatment of its stockholders for as long as the new Delivery Point is in use

7.D. The Tribe shall not be entitled to delivery of any LWC Delivered Water:

7.D.1. When there are not sufficient credits in the Tribe's Entitlement Account; or

7.D.2 At any time when emergencies, maintenance, or repairs of the LWC water delivery system or the physical inoperability of the outlet works preclude water deliveries to the Tribe, so long as LWC treats the Tribe in a manner consistent with LWC's treatment of its stockholders.

7.E. LWC shall notify the Tribe as soon as practicable of any emergencies, maintenance, or repairs that may interrupt water deliveries to the Tribe in the same manner LWC notifies its stockholders.

7.F. If Net Storage exceeds 10,000 AF at Lyman Lake on January 1 of any year, then the Tribe may order up to fifty percent (50%) of the anticipated

amount of the Tribe's Water Right and Annual Entitlement between March 1 and May 1; provided, however, that the Tribe, if weather conditions permit and the Tribe provides no less than three (3) days' advance notice, may order a single release of all or a portion of the anticipated amount of the Tribe's Water Right and Annual Entitlement for delivery between February 1 and February 28. If Net Storage is equal to or less than 5,000 AF at Lyman Lake on April 15, the Tribe shall either (i) order the Tribe's Water Right and Annual Entitlement between May 1 and August 15 or (ii) enter into a forbearance agreement as provided in Subparagraph 7.J below.

7.G. Except as provided in Subparagraph 7.F, the Tribe may order the Tribe's Water Right and Annual Entitlement for delivery between 11:59 p.m. on February 28 and 11:59 p.m. on November 15.

7.H. The Tribe shall have the right to use the Tribe's Water Right and Annual Entitlement on the Zuni Heaven Reservation in accordance with the terms of the Settlement Agreement.

7.I. The Parties agree that in order to maintain and ensure that the Tribe receives the full benefit of the Tribe's Water Right and Annual Entitlement to LWC Delivered Water provided in Paragraph 5 of this Agreement, LWC hereby agrees as follows:

7.I.1 LWC shall not change the historical operations or uses of the LWC Facilities in a manner that reduces the amount of water available to the Tribe by, for example:

- (a) the sale or lease of water,
- (b) the release of water into the Little Colorado River that is not required by law,
- (c) the release of water outside of the irrigation season inconsistent with LWC's historical operations,
- (d) the increase in storage or diversion of water by LWC upstream of Lyman Reservoir inconsistent with LWC's historical operations, or
- (e) any other such action that is inconsistent with LWC's historical operations;

provided, however, that nothing in this paragraph shall preclude LWC and its stockholders from using their remaining water rights under the Norviel Decree in a manner consistent with LWC's historical operations.



7.I.2. The Tribe shall have the right to make improvements to the LWC Facilities that would make delivery to the Tribe through a new Delivery Point (other than the Little Colorado River natural channel) more efficient or that would improve the operation, monitoring or measuring system, so long as those improvements do not reduce the total amount of water available to LWC stockholders. Should the Tribe desire to make such improvements, the Tribe shall negotiate with LWC an agreement to fund or contribute to the funding required to make such improvement(s).

7.J. The Tribe shall have the option to forebear use of the Tribe's Water Right and Annual Entitlement in exchange for compensation. With the consent of LWC, the Tribe shall also have the option to forebear use of the Tribe's Entitlement Account for credits to the Tribe's Water Right and Annual Entitlement for use in subsequent years. Should the Tribe receive compensation for its forbearance from use of a portion of the Tribe's Water Right and Annual Entitlement, the amount of water for which the Tribe receives compensation will be deducted from the Tribe's Entitlement Account.

## **8. Water Quality.**

LWC does not guarantee or warrant the quality of water released from Lyman Dam to the Zuni Tribe or the United States. Nothing in this Agreement shall require LWC to purify or otherwise treat the water released from Lyman Reservoir.

## **9. Norviel Court Assessments.**

The Tribe shall be responsible for payment to the Norviel Decree Court of the annual assessments associated with the Tribe's Water Right and Annual Entitlement.

## **10. Uncontrollable Forces.**

No Party shall be considered to be in default in the performance of any of its obligations hereunder when a failure of performance shall be due to uncontrollable forces. The term "uncontrollable forces" shall mean any cause beyond the control of the Party seeking relief from an obligation hereunder including, but not limited to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, terrorism, or government priorities and restraint by court order or public authority.

## **11. Agreement Binding in Perpetuity.**

This Water Right, Entitlement and Perpetual Delivery Agreement, including without limitation the Tribe's Water Right and Annual Entitlement and the related Operating Agreement, shall be binding in perpetuity, or until Lyman Reservoir is unable

to store water, on LWC and its successors and assigns, and it shall not be subject to modification or termination unless otherwise agreed upon in writing by the Parties. The Tribe's Water Right and Annual Entitlement to LWC Delivered Water shall be held in trust by the United States for the benefit of the Tribe.

**12. Mutual Representation and Warranty.**

Each Party warrants to the other that it is duly organized and existing and each Party further warrants that it and the respective signatories have full right and authority to enter into and consummate this Agreement and any related documents on behalf of their respective stockholders and members.

**13. Indemnification.**

13.A. Subject to all other provisions in this Agreement, the Operating Agreement, and the Settlement Agreement, the Tribe shall indemnify, defend and hold harmless LWC, its stockholders, employees and agents, from all losses, damages, claims, liabilities and expenses (including without limitation reasonable attorneys' fees) for damages to property or injury to persons downstream of Lyman Reservoir arising from the release of the Tribe's Water Right and Annual Entitlement water at the Delivery Point by LWC employees or agents. The Tribe's duty to indemnify, defend, and hold harmless shall only arise if LWC's release of the Tribe's Water Right and Annual Entitlement water occurs in the amount and pursuant to the timing authorized by a Tribal water order as provided in the Operating Agreement.

13.B. LWC shall indemnify, defend and hold harmless the Tribe, its employees and agents, for all reasonable and necessary costs of defense, including attorneys' fees, arising out of any lawsuit naming the Tribe, which is initiated by or on behalf of any LWC stockholder within four (4) years after the date this Agreement is approved by both the Norviel Decree Court and the Adjudication Court, that challenges the validity of this Agreement or any amendments to LWC's articles of incorporation, bylaws and operating procedures that, in the opinion of LWC, are necessary to provide for the approval of this Agreement; provided, however, that LWC shall have the sole authority to retain counsel to defend the Tribe's interests, together with the interest of LWC. In the event the Tribe retains independent counsel to defend such lawsuit, then it shall be responsible for all expenses and costs related thereto. In any event, the Parties shall cooperate in defending against such action or proceeding in upholding the validity of this Agreement.

13.C. The indemnified party shall provide the indemnifying party with prompt written notice of the indemnified party's receipt of any communication or notice in connection with any and all losses, damages, claims, liabilities, expenses (including without limitation reasonable attorneys' fees), or other reasonable or necessary costs of defense subject to indemnification. The indemnifying party's

duty to defend and indemnify shall arise upon the indemnified party's provision of such written notice. The failure to provide such notice shall not relieve the indemnifying party of its duty except to the extent that the indemnifying party is prejudiced by any delay. No undertaking to defend or indemnify shall constitute, nor shall it be construed to constitute, an admission of responsibility.

**14. Best Efforts.**

The Parties hereby agree to use their best efforts to obtain all necessary approvals, authorizations, and other favorable actions of the Adjudication Court, the Norviel Decree Court, and any other state or federal judicial or administrative bodies that are necessary for the binding approval and operation of this Agreement.

**15. Notices.**

Any notice given in connection with enforcement, alterations, or breaches of this Agreement shall be given in writing and addressed to the Party to be served at the following addresses or such other addresses as the parties may subsequently designate in writing:

**THE LYMAN WATER COMPANY:**

Lyman Water Company  
Post Office Box 521  
St. Johns, Arizona 85936  
Attention: President

with a copy to:

David A. Brown  
Michael J. Brown  
Brown & Brown Law Offices, P.C.  
P.O. Box 3138  
Pinetop, Arizona 85935  
Tel: 928/367-3235  
Fax: 928/367-3239

**THE ZUNI INDIAN TRIBE:**

Zuni Indian Tribe  
P.O. Box 339  
Zuni, New Mexico 87327  
Attn: Andres Cheama, Coordinator  
Zuni Tribe Water Rights Program  
Tel: 505/782-5852  
Fax: 505/782-2726

with a copy to:

Jane Marx  
Attorney at Law, P.C.  
2825 Candelaria Road NW  
Albuquerque, New Mexico 87107  
Tel: 505/344-1176  
Fax: 505/344-8694

**THE UNITED STATES:**

Regional Director  
U.S. Department of the Interior  
Bureau of Indian Affairs  
Southwest Region  
1001 Indian School NW  
Albuquerque, New Mexico 87104  
Tel: 505/563-3100

Any notice given by (1) mail shall be deemed to have been given when deposited in the United States mail, first class and postage prepaid; (2) overnight common carrier courier service shall be deemed to be given on the business day (not including Saturday) immediately following the date it was deposited; or (3) delivery in person or by messenger shall be deemed to be given upon receipt.

**16. Entire Agreement; Modification.**

This Agreement, the Operating Agreement, and the Settlement Agreement represent the final and entire agreement among LWC, the United States, and the Tribe with respect to the Water Right, Entitlement and Perpetual Delivery Agreement, and it may not be amended, changed, modified, or altered except by written instrument signed by each Party hereto. The foregoing notwithstanding, nothing in this Agreement is intended nor shall it be interpreted to modify the terms and conditions of the Settlement Agreement.

**17. Waiver.**

A waiver by any Party of any breach of this Agreement shall not be binding upon the waiving Party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving Party's rights with respect to any other or further breach. All remedies, either under this Agreement, by law, or otherwise afforded to either Party shall be cumulative, not alternative.

**18. Severability.**

The invalidity, illegality or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of this Agreement unless the severed provision materially alters the terms and intent of this Agreement to provide to the Tribe and the United States, in exchange for compensation, a permanent water right and entitlement to a portion of LWC water as described above. Any void provision shall be deemed severed from the Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The Parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

**19. Choice of Law; Dispute Resolution.**

This Agreement shall be governed and construed in accordance with the laws of the State of Arizona and any applicable federal law. All disputes between the Parties arising under this Agreement and relating to the Tribe's Water Right and Annual Entitlement shall be referred to the Norviel Decree Court or its successor for the limited purpose of enforcing the provisions of this Agreement. All other disputes between the Parties arising under this

Agreement shall be referred to a court of competent jurisdiction for the limited purpose of enforcing the provisions of this Agreement.

**20. Binding Provisions.**

The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and assigns of the Parties to this Agreement.

**21. Effective Date.**

Paragraph 3 of this Agreement shall be effective on the date this Agreement is executed by the Parties, and the remainder of the Agreement shall become enforceable on the date that all the Conditions Precedent to the Water Right, Entitlement and Perpetual Delivery Agreement have been satisfied.

IN WITNESS WHEREOF, the parties have executed this Agreement below.

THE LYMAN WATER COMPANY, an  
Arizona non-profit corporation

By: Jim L. Hauser  
Jim L. Hauser, President

Date: 2-27-06

THE ZUNI INDIAN TRIBE,  
a federally recognized Indian Tribe -

By: Arlen P. Quetawki, Sr.  
Arlen P. Quetawki, Sr., Governor

Date: 2-23-06

THE UNITED STATES

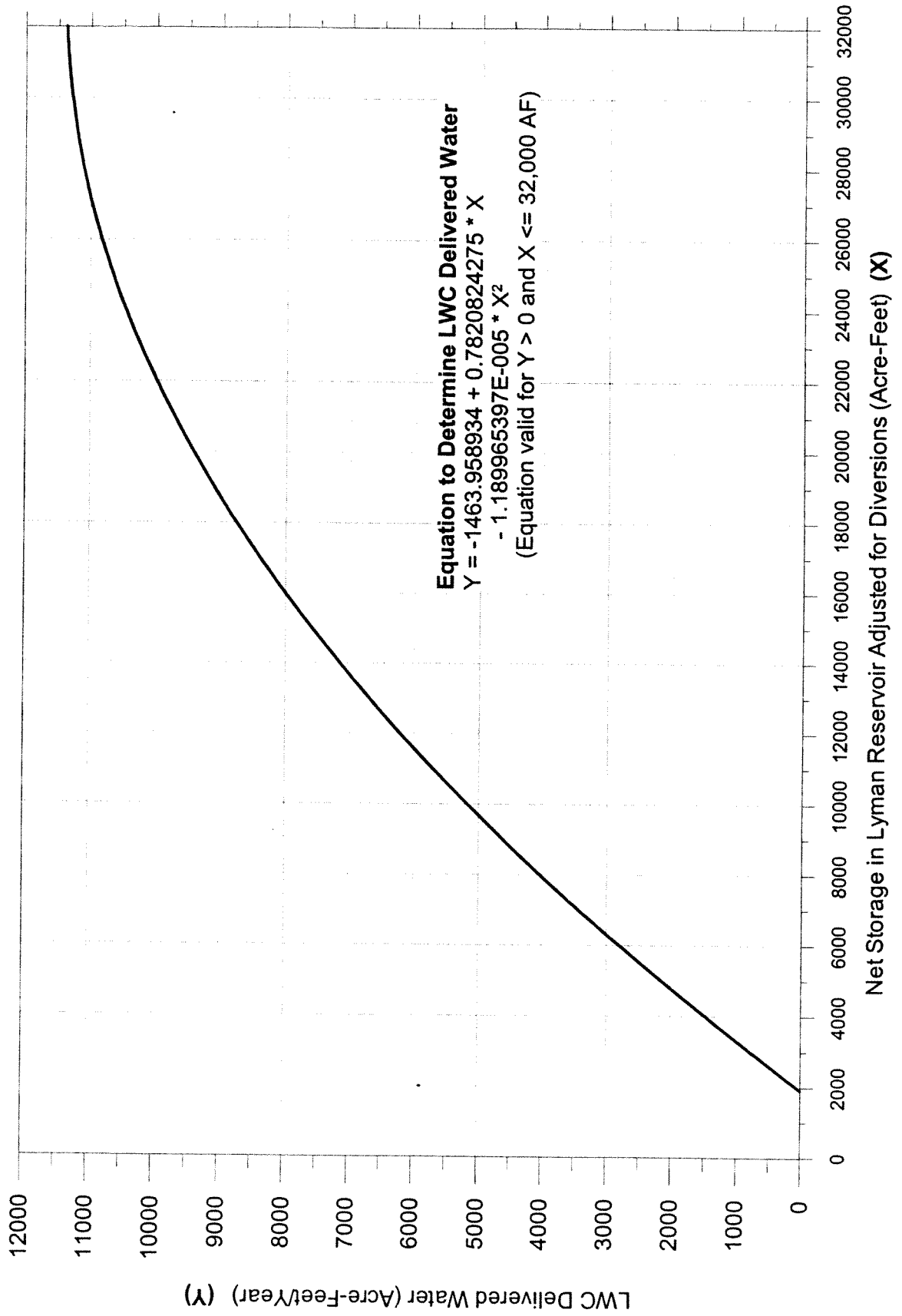
By: Stephen L. Birdwell  
Name: Acting for Larry Morris  
Regional Director  
U.S. Department of the Interior  
Bureau of Indian Affairs  
Southwest Region

Date: 2/22/06

OFFICE OF THE SOLICITOR  
INTERMOUNTAIN REGIONAL OFF

DATE	SURNAME
2/21/06	ETROUEN

EXHIBIT A



**EXHIBIT B****Historical Lyman Water Company Deliveries in  
Lyman Canal (Acre-Feet/Year)**

<b>Water Year</b>	<b>Releases to Lyman Canal <sup>1)</sup></b>
1951	3,327
1952	10,945
1953	7,463
1954	1,039 <sup>2)</sup>
1955	403
1956	6,071
1957	0
1958	8,897
1959	8,705
1960	10,881
1961	4,391
1962	9,477
1963	6,413
1964	6,596
1965	9,888
1966	14,940
1967	8,043
1968	12,662
1969	8,510
1970	7,957
1971	5,928
1972	5,361
1973	10,033
1974	8,643
1975	8,597
1976	10,050
1977	8,079
1978	5,787
1979	11,202
1980	9,874
1981	8,405 <sup>2)</sup>
1982	7,550 <sup>2)</sup>
1983	10,600 <sup>2)</sup>
1984	8,121 <sup>2)</sup>
1985	11,549
1986	10,877
1987	11,402
1988	10,580
1989	11,729
1990	6,387
1991	4,596
1992	5,311
1993	11,011
1994	10,087
1995	11,396
1996	9,060
1997	2,848
1998	2,410
1999	433
2000	1,896
2001	2,375
2002	325
2003	247
2004	1,097
Average	7,231
Median	8,100

1) Excludes 400 afy delivered to SJIC, except for year 1957  
which only had 213 af annual deliveries.

2) Years 1954 and 1981-84 estimated from Lyman Lake balance.